

SEP 25 2009

JAMES N. HATTEN, Clerk
By: AWH Deputy Clerk

CIVIL ACTION NO.
1:09-CV-2267

V.

Defendants.

This action arises out of a contract between Mesa and Delta. Because the complaint does not contain factual matter sufficient to support the conclusion that the breach alleged by Delta is material, Count I of the Complaint -- which seeks a declaration of Delta's right to terminate the agreement, and which relies on the element of materiality -- should be dismissed for failure to state a claim upon which relief can be granted. The complaint offers only "labels and conclusions"

regarding the conclusion of materiality, and provides just “a formulaic recitation of the elements of a cause of action” which, under recent decisions of the United States Supreme Court, “will not do.” *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. 1937, 1949 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As fully explained in the accompanying Memorandum of Law, under *Iqbal* and *Twombly* and New York’s law of materiality,¹ Delta has not and cannot allege facts sufficient to state a claim for the declaratory judgment requested in Count I. For these reasons, Count I should be dismissed.

¹ The Agreement provides that it “is subject to, and will be governed by and interpreted in accordance with, the laws of the State of New York.” Art. 20(A).

Dated: September 25, 2009

Respectfully submitted,



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DELTA AIR LINES,
Plaintiffs,

Y.

MESA AIR GROUP, INC. and
FREEDOM AIRLINES, INC.,
Defendants.

CIVIL ACTION NO.
1:09-CV-2267

CERTIFICATE OF SERVICE

I hereby certify that I have this manually filed a true and correct copy of the foregoing MESA AIR GROUP, INC.'S AND FREEDOM AIRLINES, INC.'S PARTIAL MOTION TO DISMISS COUNT I OF THE COMPLAINT, and have caused same to be served upon the following counsel of record by first-class mail:

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